

State of California  
BOARD OF EQUALIZATIONS

**TRANSACTIONS (SALES) AND USE TAX REGULATIONS**

**Regulation 1828. PROCESS FOR REVIEWING TRANSACTIONS AND USE TAX DISTRIBUTION INQUIRIES.**

*Reference:* Section 7270 Revenue and Taxation Code.

**(a) DEFINITIONS.**

(1) **DISTRICT.** "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which levies a transactions and use ("district") tax that the Board administers pursuant to Part 1.6, Division 2, Revenue and Taxation Code (Sections 7251-7279.6).

(2) **DISTRICT TAX.** Any tax levied under special statutory authority that the Board administers pursuant to Part 1.6, Division 2, Revenue and Taxation Code (Sections 7251-7279.6). District taxes may be for either general or special purposes.

(3) **INQUIRING DISTRICTS AND THEIR CONSULTANTS (IDC).** "Inquiring Districts and their Consultants (IDC)" means any district which has adopted a district tax ordinance and which has entered into a contract with the Board to perform all functions incidental to the administration or operation of that ordinance. IDC also includes any consultant that has entered into an agreement with the tax district and has a current resolution filed with the Board which authorizes one (or more) of its officials, employees, or other designated persons to examine the appropriate sales, transactions, and use tax records of the Board.

(4) **CLAIM (INQUIRY) OF INCORRECT DISTRIBUTION OR NON DISTRIBUTION OF DISTRICT TAX.** "Claim or inquiry" means a written request from an IDC for investigation of suspected improper distribution or nondistribution of district tax. The inquiry must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data must include at a minimum all of the following for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or d.b.a. (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, including the location to which the property the sales of which are at issue was delivered. In cases that involve claims that the transactions that are the focus of the appeal are subject to the IDC's district use tax, evidence must be submitted that the retailer is engaged in business in the IDC under Regulation 1827.

(F) Name, title, and phone number of the contact person.

(G) The tax reporting periods involved.

(5) **CLAIM DATE** "Claim date" shall be the date the inquiry of suspected improper distribution or non distribution of district tax that contains the facts required by subdivision (a)(4) of this regulation is received by the Board, unless an earlier such date is operationally documented by the Board. The Board shall redistribute district tax revenues back from the claim date to the beginning of the applicable statute of limitations. If the IDC is not able to obtain the above minimum factual data but provides a letter with the inquiry documenting IDC efforts to obtain each of the facts required by subdivision (a)(4) of this regulation, the Board will use the date this inquiry is received as the claim date.

(6) **BOARD MANAGEMENT.** "Board Management" consists of the Executive Director, Chief Counsel, Assistant Chief Counsel for Business Taxes, and the Deputy Director of the Sales and Use Tax Department.

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### **(b) INQUIRIES.**

(1) **SUBMITTING INQUIRIES.** Every inquiry regarding district tax distributions must be submitted in writing and shall include the information set forth in subdivision (a)(4) of this regulation. All inquiries must be sent directly to the Allocation Group in the Audit Determination and Refund Section of the Board's Sales and Use Tax Department.

(2) **ACKNOWLEDGEMENT OF INQUIRY.** The Allocation Group will acknowledge inquiries. Acknowledgement of receipt does not mean that the inquiry qualifies to establish a claim date under subdivision (a)(4) of this regulation. The Allocation Group will review the inquiry and notify the IDC if the inquiry does not qualify to establish a claim date. Investigation of an alleged improper distribution cannot occur until a claim date is established.

### **(c) REVIEW PROCESS.**

(1) **REVIEW BY ALLOCATION GROUP SUPERVISOR.** The Allocation Group will investigate all accepted inquiries. If the Allocation Group concludes that an improper distribution has not occurred and recommends that a request for redistribution be denied, the IDC will be notified of the recommendation and allowed 30 days from the date of mailing of the notice of denial to contact the Allocation Group Supervisor to discuss the denial. The Allocation Group's notification that an improper distribution has not occurred must state the specific facts on which the conclusion was based. If the IDC contacts the Allocation Group Supervisor, the IDC must state the specific facts on which its disagreement is based, and submit all additional information in its possession that supports its position at this time.

(2) **REVIEW BY AUDIT DETERMINATION AND REFUND SECTION SUPERVISOR.** Subsequent to the submission of additional information by the IDC, if the Allocation Group Supervisor upholds the denial, the IDC will be advised in writing of the decision and that it has 30 days from the date of mailing of the decision to file a "petition for redistribution" with the Audit Determination and Refund Section Supervisor. The petition for redistribution must state the specific reasons of disagreement with the Allocation Group Supervisor's findings. If a petition for redistribution is filed by the IDC, the Audit Determination and Refund Section Supervisor will review the request for redistribution and determine if any additional staff investigation is warranted prior to making a decision. If no basis for redistribution is found, the petition will be forwarded to the Local Tax Appeals Auditor.

(3) **REVIEW BY LOCAL TAX APPEALS AUDITOR.** After the petition is forwarded to the Local Tax Appeals Auditor, a conference between the Local Tax Appeals Auditor and the IDC will be scheduled. However, the IDC may provide a written brief in addition to or instead of attending the conference. If a conference is held, the Local Tax Appeals Auditor will consider oral arguments, as well as review material previously presented by both the IDC and the Sales and Use Tax Department. The Local Tax Appeals Auditor will prepare a written Decision and Recommendation (D&R) detailing the facts and law involved and the conclusions reached.

(4) **REVIEW BY BOARD MANAGEMENT.** If the D&R's recommendation is to deny the petition, the IDC will have 30 days from the date of mailing of the D&R to file a written request for review of the D&R with Board Management. The request must state the specific reasons of disagreement with the D&R and submit any additional information that supports its position. Board Management will only consider the petition and will not meet with the IDC. The IDC will be notified in writing of the Board Management's decision. If a written request for review of the D&R is not filed with Board Management within the 30-day period, the D&R becomes final at the expiration of that period.

(5) **REVIEW BY BOARD MEMBERS.** If Board Management's decision is adverse to the IDC, the IDC may file a petition for hearing by the Board. The petition for hearing must state the specific reason for disagreement with Board Management findings.

**(A) Petition for Hearing.** The IDC shall file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management's decision. If a petition for hearing is not filed within the 90-day period, the Board Management's decision becomes final at the expiration of that period.

**(B) Persons to be Notified of the Board Hearing.** After receiving the IDC's petition for hearing, the Board Proceedings Division will notify the IDC and the following persons of the Board hearing:

1. The taxpayer(s) whose district tax reporting was the subject of the petition.
2. All districts that would be substantially affected if the Board does not uphold the taxpayer's original distribution. For the purpose of this subdivision a district is "substantially affected" if its total redistribution would

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increase or decrease by the amount of 5% of its average quarterly distribution (generally, the prior four calendar quarters) or \$50,000, whichever is less, as a result of such redistribution.

The notification will state that the claimed improper distribution is being placed on the Board's Hearing Calendar to determine the proper distribution and that the IDC and all districts so notified are considered parties to the hearing.

**(C) The Hearing and Parties to the Hearing.** The petitioning IDC and all districts notified of the Board hearing pursuant to subdivision (c)(5)(B) are parties to the Board hearing. The taxpayer, however, shall not be considered a "party" within the meaning of this regulation unless it actively participates in the hearing process by either filing a brief or making a presentation at the hearing. The hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice. The Board's decision is final as provided in Regulation 5082. The Board's decision exhausts all parties' administrative remedies on the matter.

**(D) Presentation of New Evidence.** If new arguments or evidence not previously presented at the prior levels of review are presented after Board Management's review and prior to the hearing, the Board Proceedings Division shall forward the new arguments or evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(C) of this regulation, no new evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor may be presented at the Board hearing.

### **(d) TIME LIMITATIONS.**

(1) An IDC will be limited to one 30-day extension of the time limit established for each level of review through the Board Management level.

(2) If action is not taken beyond acknowledgement on any inquiry for a period of six months at any level of review, the IDC may request advancement to the next level of review. For the purpose of these procedures, "action" means taking the steps necessary to resolve the inquiry.

(3) By following the time limits set forth in subdivisions (c), (d)(1) and (d)(2), any claim date established by the original inquiry will remain open even if additional supporting information is provided prior to closure. If the time limits or any extensions are not met, or if closure has occurred, any additional supporting documentation submitted will establish a new claim date as of the date of receipt of the new information.

### **(e) APPEAL RIGHTS OF DISTRICTS THAT WILL LOSE REVENUE AS THE RESULT OF A REDISTRIBUTION.**

(1) If at any time during the review process prior to Board hearing, the Board's investigation determines that an improper distribution has occurred, any district that will lose 5% of its average quarterly receipts (generally, the prior four calendar quarters) or \$50,000, whichever is less, will be informed of the decision and be allowed 30 days from the date of mailing the notice, to contact the Allocation Group to discuss the proposed redistribution. The losing district may follow the same appeals procedure as described in subdivisions (c) and (d) of this regulation. "Losing district" includes a gaining district where the original decision in favor of the gaining district was overturned in favor of a previously losing district. The redistribution will be postponed until the period for the losing district to request a hearing with the Allocation Group has expired.

(2) If the losing district contacts the Allocation Group prior to Board hearing, and subsequently petitions the proposed redistribution, the redistribution postponement will be extended pending the final outcome of the petition.

### **(f) OPERATIVE DATE.**

The provisions of this regulation shall apply to redistribution inquiries and appeals filed after July 1, 2004. Inquiries and appeals filed prior to this date shall continue to be subject to existing inquiries and appeals procedures.

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However, for inquiries filed prior to July 1, 2004, the IDC may elect in writing to proceed under the provisions of this regulation as to appeals not already decided or initiated. In such cases, failure to make such written election prior to appealing to the next step of review under the existing procedures shall constitute an election not to proceed under the provisions of this regulation. If written election to proceed under the provisions of this regulation is made, the provisions of this regulation become applicable the date the election is received by the Board. Neither election shall be subject to revocation.

*History*     Adopted March 23, 2004, effective June 17, 2004.

*Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.*